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Attorneys for Defendants  
CITY OF PETALUMA and  
OFFICER PAUL ACCORNERO

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MELVIN ATKINS,

Plaintiff,

v.

CITY OF PETALUMA; PETALUMA POLICE  
DEPARTMENT; OFFICER PAUL  
ACCORNERO; and DOES 1 through 100,  
inclusive,

Defendants.

Case No: C07-05524 SI

**JOINT UPDATED CASE MANAGEMENT  
CONFERENCE STATEMENT**

DATE: May 14, 2008  
TIME: 2:30 a.m.  
DEPT: Courtroom 10, 19<sup>th</sup> Floor  
JUDGE: Hon. Susan Illston

Complaint Filed: September 14, 2007  
Trial Date: February 9, 2009

1 The parties to the above-entitled case jointly submit their Updated Case Management  
2 Statement and request that the Court adopt this statement in issuing its Case Management Order.  
3 The parties have reached a tentative settlement in this case, contingent upon City Council approval.  
4 This matter will be heard by the Council on June 2, 2008. The parties request that this case be put  
5 over for 60 days to allow time for Council approval and dismissal of this matter.

6 1. Jurisdiction & Service. This is a civil rights case, under 42 USC 1983, seeking damages,  
7 for violation of the plaintiff's constitutional rights, thus jurisdiction is proper based upon 28 USC  
8 §1441(b) based upon federal question. All parties have been served.

9 2. Facts:

10 A. Plaintiff's Facts:

11 On December 19, 2006, at approximately 6:25 a.m., Plaintiff MELVIN ATKINS  
12 (hereinafter 'MR. ATKINS') was riding a bicycle down the street across from the local Sheriff  
13 Department station in Marin City. As MR. ATKINS rode past, a Petaluma Police Department  
14 officer (DEFENDANT ACCONERO) was taking his K-9 attack dog, a Belgian Malinois named  
15 Roy, from the back of a patrol car. The dog saw MR. ATKINS and bolted towards him as if to  
16 attack. Startled, knowing that police K-9s are highly trained attack dogs, MR. ATKINS hit his  
17 brakes hard, causing him to fly forward over the handle bars and into the air.

18 As the dog approached, MR. ATKINS heard Defendant ACCORNERO give the dog a  
19 "NO!" command. MR. ATKINS hit the ground hard with a thud. Dazed, MR. ATKINS could feel  
20 the dog biting him in several different spots on his body. After the attack, MR. ATKINS could feel  
21 DEFENDANT ACCORNERO trying to place himself between MR. ATKINS and the dog, while  
22 continuing to give the dog the "NO!" command. As MR. ATKINS lay on the ground, he could see  
23 DEFENDANT ACCORNERO physically carrying the dog away in his arms and continuing to give  
24 the "NO!" command as the dog continued to bark

25 After the attack, MR. ATKINS went to the emergency room at Marin General Hospital.  
26 Subsequently he made several visits to the Marin City Clinic and has received treatment from a  
27 therapist regarding the incident.

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1           B.     Defendants' Facts:

2           On December 19, 2006, at 6:00 a.m., Officer Paul Accornero was with his K-9 dog, Roy,  
3 when Mr. Atkins came riding down the middle of the street on a bike. Officer Accornero heard Mr.  
4 Atkins jam on his breaks and saw Mr. Atkins fall. Roy went over to Mr. Atkins, who was wearing  
5 layers of puffy jackets like the K-9 trainers wear, and Roy put his jaw around Mr. Atkins' elbow.  
6 Officer Accornero immediately gained control of the dog. Roy did not break through Mr. Atkins'  
7 skin at all and Mr. Atkins admitted he was fine, but as he was about to leave, an individual came  
8 over to the two men and repeatedly told Mr. Atkins that he should sue the City. Subsequently, Mr.  
9 Atkins did.

10          3.     Legal Issues:

- 11           a.     Whether Mr. Atkins was injured?  
12           b.     Whether any of Mr. Atkins' rights were violated?  
13           c.     Whether Officer Accornero and the City are entitled to qualified immunity?

14          4.     Motions: Defendants may bring a summary judgment motion based upon qualified  
15 immunity.

16          5.     Amendment of Pleadings: N/A.

17          6.     Evidence Preservation: Defendants have notified all relevant departments to maintain and  
18 preserve anything related to this Action.

19          7.     Disclosures: The parties will exchange their Disclosures prior to this Conference.

20          8.     Discovery: The parties have agreed to hold off on depositions and exchanging written  
21 discovery until after attending an early settlement conference, provided the parties make their Rule  
22 26 disclosures.

23          9.     Class Actions: N/A.

24          10.    Related Cases: N/A.

25          11.    Relief: Plaintiff has suffered and continues to suffer physical and emotional injuries as a  
26 result of the attack. Plaintiff seeks to recover his out-of-pocket economic losses for medical and  
27 mental health expenses and other economic losses. Additionally, plaintiff seeks recovery for his  
28 non-economic damages.

12. Settlement and ADR: The parties settled this case pending City Council Approval on May 2, 2008 before Magistrate Judge Zimmerman.

13. Consent to Magistrate Judge For All Purposes: Defendants previously declined to proceed before a Magistrate Judge.

14. Other References: N/A.

15. Narrowing of Issues: Unknown at this time.

16. Expedited Schedule: N/A.

17. Scheduling: Each party may take all depositions agreed to by code or as agreed to between parties; each Party shall be entitled to propound written discovery; each party may propound unlimited requests for production of documents or things; each party may propound unlimited request for admissions; fact discovery cutoff on **September 12, 2008**; expert disclosures and reports by **October 3, 2008**; expert rebuttal reports **October 17, 2008**; expert dispositions to be completed by **October 30, 2008**; last day of hearing on motions **November 7, 2008**; the parties agree to meet and confer concerning any modifications to this plan.

18. Trial: Plaintiff requests jury trial; defendants reserve. Estimated length of trial is three days. Trial set for: **February 9, 2009**; Pre-trial conference set for: **January 26, 2009**; Mandatory pre-trial settlement conference set for: **February 2, 2009**.

19. Disclosure of Non-Party Interested Entities or Persons: The parties will separately file their "Certification of Interested Entities or Persons." Defendants are presently unaware of any other interested parties.

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20. Any Other Matters: N/A.

Dated: May 7, 2008

LAW OFFICES OF CHARLES A. BONNER

By: \_\_\_\_\_/s/\_\_\_\_\_  
Cabral Bonner  
Attorneys for Plaintiff  
MELVIN ATKINS

Dated: May 7, 2008

MEYERS, NAVE, RIBACK, SILVER & WILSON

By: \_\_\_\_\_/s/\_\_\_\_\_  
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